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International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the initial report of the Lao People's Democratic Republic*

1. The Committee considered the initial report of the Lao People's Democratic Republic (CCPR/C/LAO/1) at its 3504th and 3505th meetings (see CCPR/C/SR.3504 and 3505), held on 11 and 12 July 2018. At its 3519th meeting, held on 23 July 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the Lao People's Democratic Republic, albeit over six years late, and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's high-level delegation on the measures taken by the State party to implement the provisions of the Covenant since its entry into force. The Committee is grateful to the State party for its written replies (CCPR/C/LAO/Q/1/Add.1) to the list of issues (CCPR/C/LAO/Q/1), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The inclusion of a chapter on fundamental rights in the amended Constitution of 2015;

(b) The adoption of the National Action Plan on the Prevention and Elimination of Violence against Women and Children (2014–2020).

4. The Committee welcomes the State party's ratification of the following international instruments:

(a) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 26 September 2012;

(b) The Convention on the Right of Persons with Disabilities, on 25 September 2009.

* Adopted by the Committee at its 123rd session (2–27 July 2018).

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C. Principal matters of concern and recommendations

Domestic implementation of the Covenant

5. While noting the State party's dualist legal system and the supremacy of treaty obligations as proclaimed in the new law on treaties and international agreements, as well as the efforts to address conflicts between domestic law and treaty obligations through a review of certain legislation, the Committee is concerned that gaps still remain between the domestic legal framework and the Covenant. It is also concerned that awareness and knowledge about the Covenant among State officials, prosecutors, judges and lawyers appear to remain poor despite the different training initiatives implemented in recent years, and that there are no examples of court decisions referring to the Covenant in the application or interpretation of domestic law. The Committee regrets that the State party is not currently ready to ratify the first Optional Protocol to the Covenant (art. 2).

6. **The State party should undertake a comprehensive review of legislation with a view to identifying any potential gaps or conflicting provisions with the Covenant, and ensure that all Covenant rights are given full legal effect in its domestic legal order. It should strengthen the mechanisms and procedures aimed at ensuring that draft legislation is in line with the Covenant, and step up efforts to provide effective specialized and adequate training on the Covenant for government officials, members of the National Assembly, prosecutors, judges and lawyers to ensure that they apply and interpret domestic law in the light of the Covenant. The State party should also reconsider ratifying the first Optional Protocol to the Covenant, which establishes an individual complaint mechanism.**

National human rights institution

7. The Committee notes the existence of national governmental bodies with mandates relating to human rights, including the National Steering Committee on Human Rights, the National Commission for the Advancement of Women, Mothers and Children, and the National Committee for Persons with Disabilities and the Elderly. It regrets that none of those institutions is an independent body compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

8. **The State party should begin the process of establishing a national human rights institution with a mandate to protect the full range of human rights and that is fully compliant with the Paris Principles, and functions independently, transparently and effectively to promote and protect human rights.**

Reservations

9. The Committee notes the State party's reservation to article 22 of the Covenant and the interpretative declarations to articles 1 and 18 of the Covenant, and notes the State party's assertion that it is in the process of reconsidering the necessity of maintaining them (art. 2).

10. **The State party should review the justifications and the necessity of maintaining its reservation and interpretative declarations with a view to withdrawing them.**

States of emergency

11. The Committee is concerned that existing regulations governing states of emergency, including the Law on National Defence, do not define the permissible derogations and restrictions on human rights in the event of public emergency, nor do they explicitly prohibit derogations from the non-derogable provisions of the Covenant (art. 4).

12. **The State party should bring its laws governing states of emergency into full compliance with the requirements of article 4 of the Covenant, as interpreted in the Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, particularly with regard to the non-derogable**

provisions of the Covenant, and limit any derogations to those that are strictly required by the exigencies of the situation.

Counter-terrorism

13. The Committee is concerned about the overbroad definition of terrorism in the domestic legal framework, specifically the broad definition of terrorism in article 7 of the Law on Money Laundering and Combating the Financing of Terrorism. It also regrets the absence of information on legal safeguards afforded to persons suspected of or charged with terrorist acts or related crimes (arts. 2, 9 and 14).

14. **The State party should revise the current broad definition of terrorism under the Law on Money Laundering and Combating the Financing of Terrorism, and ensure that any existing or new counter-terrorism legislation is fully compliant with the Covenant and the principles of legality, certainty, predictability and proportionality, and that persons suspected of or charged with terrorist acts or related crimes are provided in law and practice with all legal safeguards, in accordance with the Covenant.**

Non-discrimination framework

15. While noting the prohibition of discrimination in article 35 of the Constitution and in other laws, the Committee is concerned that the current legal framework does not afford comprehensive protection against discrimination on all the grounds prohibited under the Covenant, including race, colour, sex, political or other opinion, property, birth, sexual orientation, gender identity and other status (arts. 2 and 26).

16. **The State party should take measures, including considering adopting a comprehensive anti-discrimination law, to ensure that the relevant legal framework provides adequate and effective substantive and procedural protection against all forms of discrimination, including in the private sphere, on all the prohibited grounds under the Covenant, and access to effective and appropriate remedies for all victims of discrimination.**

Death penalty

17. The Committee welcomes the de facto moratorium on executions since 1989, but remains concerned that courts continue to impose death sentences, mostly for drug-related offenses. It also notes that, despite there being fewer articles that provide for the death penalty in the draft Penal Code than in the previous one (12 rather than 18), the Penal Code still prescribes the death penalty for crimes, including drug-related crimes, that do not meet the threshold of the "most serious crimes" within the meaning of article 6 (2) of the Covenant (art. 6).

18. **The State party should maintain the moratorium on executions and give due consideration to the legal abolition of the death penalty. Pending the abolition of the death penalty, the State party should undertake a comprehensive review of relevant legislation to ensure that the death penalty can be imposed only for the most serious crimes, that is, only for crimes of extreme gravity involving intentional killing, and also ensure that, if imposed at all, the death penalty is never imposed in violation of the Covenant, including in violation of fair trial procedures. The State party should also consider ratifying or acceding to the second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

Enforced disappearances

19. The Committee is concerned about the lack of a legal framework to define and criminalize all acts of enforced disappearance, and about the prevalent pattern of impunity for such acts. It regrets the paucity of relevant information provided by the State party regarding the measures taken and the progress made in investigating the enforced disappearance of civil society leader Sombath Somphone, who reportedly was last seen at a police checkpoint on 15 December 2012 and whose abduction was reportedly captured on a CCTV camera. The Committee is also concerned at the State party's failure to provide

relevant information about investigations into the fate or whereabouts of other alleged victims of enforced disappearance, such as Kha Yang, Wuthipong Kachathamakul, Bouavanh Chanhmanivon and Keochay, Kingkeo Phongsely, Somchit, Soubinh, Souane, Sinpasong, Khamsone, Nou, Somkhit, and Sourigna, Somphone Khantisouk and a number of members of the Hmong community. The Committee notes with concern the delegation's sweeping denial of such allegations and its criticism of the sources of allegations about enforced disappearances during its dialogue with the Committee (arts. 2, 6, 7, 9, 14 and 16).

20. **The State party should:**

(a) **Effectively criminalize enforced disappearance, in accordance with international standards, and ensure that such criminal provisions are enforced in practice;**

(b) **Step up efforts to conduct a thorough, credible, impartial and transparent investigation into the enforced disappearance of Sombath Somphone, and into all other cases of alleged enforced disappearances, including of the aforementioned persons, in order to clarify their fates and whereabouts and identify those responsible;**

(c) **Ensure that victims and their families are regularly informed of the progress and results of investigations and receive the official administrative documents required by international standards; and that they are provided with full reparation, including rehabilitation, adequate compensation and guarantees of non-repetition;**

(d) **Ensure that perpetrators are prosecuted and, if convicted, punished with penalties that are commensurate with the gravity of the crime;**

(e) **Provide appropriate specialized training on the effective investigation and handling of enforced disappearances to security forces, and judicial and other law enforcement officials, including on the provisions of relevant international standards;**

(f) **Act upon its commitment to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which the State party accepted in the context of the universal periodic review of the Human Rights Council, in 2010 and 2015.**

Maternal mortality, voluntary termination of pregnancy and reproductive health

21. While noting the decrease in maternal mortality and the efforts made to improve prenatal and obstetric postnatal care, the Committee remains concerned that maternal mortality remains high. It is also concerned about the criminalization, under article 92 of the Penal Code, of abortion, except in cases when there is a risk to the life of the woman, and at the reported prevalence of unsafe abortions, which put women's lives and health at risk and contribute to maternal mortality. The Committee is also concerned about reports of high rates of teenage pregnancy and limited access to sexual and reproductive health services, and information for this age group (arts. 3, 6, 7, 17 and 26).

22. **The State party should:**

(a) **Redouble its efforts to effectively reduce maternal mortality, including that due to unsafe abortions;**

(b) **Amend its legislation with a view to ensuring effective access to safe, legal abortion when the life or health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the woman or girl substantial pain or suffering, most notably when the pregnancy is the result of rape or incest, or when it is not viable, and ensure that criminal sanctions are not applied to women and girls who undergo abortions or to medical service providers assisting them in doing so;**

(c) **Strengthen and increase the number of education programmes about sexual and reproductive health among women, men and adolescents, and ensure that women and teenage girls have access to appropriate sexual and reproductive health services throughout the country, including appropriate and affordable contraception.**

Torture and ill-treatment, and conditions of detention

23. The Committee is concerned that the definition of torture and the criminalization of acts of torture under the State party's criminal legislation do not meet the requirements of article 7 of the Covenant, and notes in this regard the State party's assertion that the draft Penal Code, which is now under consideration, defines torture as an independent crime. The Committee is concerned about consistent reports, although the State party rejects these allegations, of punishment in prisons and drug detention centres amounting to torture and ill-treatment. The allegations include locking inmates' legs in wooden stocks for long periods, severe beatings and burning body parts with cigarettes, and cases of death in custody (arts. 2, 6, 7 and 10).

24. **The State party should take vigorous measures to eradicate torture and ill-treatment and more specifically, inter alia, to:**

(a) **Bring the definition of torture, including in the draft Penal Code currently under consideration, into conformity with article 7 of the Covenant and other international standards, preferably by codifying it as an independent crime that is not subject to a statute of limitations and that stipulates sanctions commensurate with the gravity of the crime;**

(b) **Provide security forces and judicial and law enforcement officials with effective training on the prevention of torture and on humane treatment of detainees;**

(c) **Ensure that all allegations of torture and ill-treatment and deaths in custody are promptly and thoroughly investigated by an independent and impartial body, that perpetrators are prosecuted and, if convicted, are punished with sanctions consistent with the gravity of the crime and that victims and, where appropriate, their families are provided with full reparation, including rehabilitation and adequate compensation.**

25. While noting the plans to build new detention and correction centres to reduce overcrowding and the efforts made by the Ministry of Public Security to improve conditions of detention, the Committee remains concerned about the reportedly harsh conditions in several prisons due to severe overcrowding, inadequate food supply and medical care, and the use of prolonged solitary confinement for periods of up to several years. It also notes with concern that the Office of the Supreme People's Prosecutor is the sole authority responsible for the monitoring and inspection of detention and correction centres (arts. 7 and 10).

26. **The State party should:**

(a) **Eliminate overcrowding in places of detention, including by the use of non-custodial alternative measures to detention in accordance with the Covenant and other relevant international standards, such as the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(b) **Redouble its efforts to improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(c) **Refrain from imposing solitary confinement, except in the most exceptional circumstances for strictly limited periods where it is objectively justifiable and proportionate;**

(d) **Establish a fully independent and effective mechanism mandated to regularly monitor and inspect all places of deprivation of liberty, and allow and facilitate monitoring visits by independent organizations.**

Arbitrary arrest and detention, and judicial control of detention

27. The Committee is concerned about reports of (a) arbitrary arrest, detention without charges and pretrial detention for periods exceeding the statutory limits, as acknowledged in 2015 by a National Assembly committee in its report, and lack of access to counsel by detained individuals for significant periods of time; (b) arbitrary arrest and detention

without due process of drug users and beggars, homeless persons, street children and persons with intellectual or psychosocial disabilities in drug detention centres. It is also concerned that, under the State party's legislation, (a) persons arrested or detained on a criminal charge may be remanded in custody on the authorization of a prosecutor, who may also decide on any subsequent extensions of such custody; (b) a prosecutor rather than a judge decides on the lawfulness of detention of persons deprived of their liberty (art. 9).

28. **The State party should bring its legislation and practice into line with article 9 of the Covenant, taking into account the Committee's general comment No. 35 (2014) on liberty and security of person. In particular, it should ensure that:**

(a) **Anyone arrested or detained enjoys in practice all the fundamental legal safeguards enshrined in article 9 of the Covenant from the outset of the deprivation of liberty, including prompt access to counsel, and has the lawfulness of the detention decided upon by a court, as set forth in article 9 (4) of the Covenant;**

(b) **Anyone arrested or detained on a criminal charge is brought before a judge or other officer authorized by law to exercise judicial power within a few days, ordinarily within 48 hours, in order to bring detention of that person under judicial control; the use of excessively lengthy period of pretrial detention is addressed effectively; and that such a person is tried within a reasonable time or released. In this respect, the Committee draws the State party's attention to paragraphs 32 and 33 of its general comment No. 35, indicating, inter alia, that a public prosecutor cannot be considered an officer exercising judicial power under article 9 (3) of the Covenant;**

(c) **The principles of legality and proportionality are strictly observed in any decisions restricting the right to liberty and security of individuals, and that due process rights are fully respected.**

Independence of the judiciary and fair trial

29. The Committee is concerned about (a) the influence and control exerted on the judiciary by the ruling party owing to, inter alia, the procedures for the appointment, transfer and removal of judges and prosecutors; (b) the constitutionally secured oversight of the National Assembly over people's courts and the Office of the Public Prosecutor, including competence to refer court decisions back in the event of identified irregularities; (c) allegations of violation of fair trial guarantees in practice, including of the right to be informed promptly and in detail about charges and failure to respect the presumption of innocence; and (d) the reported passive role of defence counsel during trial (arts. 2 and 14).

30. **The State party should take all measures necessary to eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of the judiciary by, inter alia, ensuring that procedures for the selection, appointment, promotion, suspension, removal of and disciplinary action against judges and prosecutors are in compliance with the Covenant and relevant international standards, and by revisiting the oversight role of the National Assembly over the judiciary and court decisions with a view to ensuring full respect for the principle of legal certainty and the separation of powers. It should ensure that accused persons are afforded all fair trial guarantees, including effective legal representation, and that the presumption of innocence is strictly observed in practice.**

Freedom of religion

31. The Committee is concerned about reports of persecution and discrimination against Christians, including arbitrary arrests (arts. 9, 18 and 26).

32. **The State party should guarantee the effective exercise of freedom of religion in practice, ensuring, inter alia, the protection of Christians against any form of persecution or discrimination based on their religion, and sanction any such conduct.**

Freedom of expression and peaceful assembly

33. The Committee is concerned about laws and practices that appear not to comply with the principles of legal certainty, necessity and proportionality as required by the Covenant, and recalls that, in circumstances of public debate concerning public figures in the political domain and public institutions, the value the Covenant places on uninhibited expression is particularly high (see general comment No. 34 (2011) on the freedoms of opinion and expression, para. 38). The Committee regrets the severe restrictions on freedom of opinion and expression and the right to peaceful assembly, which hinder the development of a civic space in which individuals can meaningfully exercise their human rights and promote human rights without fear of sanction or reprisal. The restrictions include:

(a) The vague and broadly formulated offences of defamation, libel and insult (Penal Code, arts. 94 and 95), of "propaganda against the Lao People's Democratic Republic" (Penal Code, art. 65) and of "gatherings aimed at causing social disorder" (Penal Code, art. 72), and their use to curtail freedom of opinion, expression and peaceful assembly;

(b) The criminalization, pursuant to Decree No. 327 of 16 September 2014, of online criticism of the Government and the Lao People's Revolutionary Party, or of circulating false or misleading information online;

(c) State control over the media, including the restrictions reportedly aimed at ensuring strict adherence to and promotion of government policy introduced by the amendments made in 2016 to the Media Act of 2008 and by the Decree on Management of Foreign Media of November 2015 requiring, inter alia, the submission of materials for governmental approval before publication;

(d) The broad and wide-ranging list of prohibited content in existing laws regulating media and publications that encourages self-censorship, and the sanctions for publishing content that does not meet governmental approval;

(e) Reports of arbitrary arrest, detention, trial without due process and criminal convictions for expression of political opposition and criticism of State authorities or policies, including through the Internet (despite the State party's argument that these do not concern freedom of expression), such as the case of Bounthanh Thammavong, who was sentenced to four years and nine months of imprisonment for a Facebook post and an article critical of the Government, and that of Somphone Phimmasone, Lodkham Thammavong and Soukan Chaithad, who were sentenced to 12 to 20 years of imprisonment for posting criticism of the Government on the Internet and participating in a peaceful demonstration in Bangkok against the policies of the State party (arts. 9, 14, 19 and 21).

34. **The State party should revise its laws and practices with a view to guaranteeing the full enjoyment of freedom of expression and peaceful assembly by everyone in practice, including by:**

(a) **Ensuring that any restrictions on the exercise of the freedom of expression and peaceful assembly comply with the strict requirements of articles 19 and 21 of the Covenant;**

(b) **Repealing or otherwise amending the criminal provisions providing for the above-mentioned vague and broadly defined offences to ensure compliance with the principle of legal certainty, and refraining from applying such provisions to suppress conduct and speech protected by the Covenant;**

(c) **Considering decriminalizing defamation and, in any case, countenancing the application of criminal law only in the most serious of cases, bearing in mind, as provided for in general comment No. 34, that imprisonment is never an appropriate penalty for defamation;**

(d) **Promoting plurality of opinions in the media, and ensuring that the media can operate free from undue State interference.**

Freedom of association

35. The Committee is concerned about restrictions of freedom of association, including (a) the lengthy and cumbersome registration process for non-profit associations, involving intrusive screening, and the reported lack of any registered associations performing human rights activities; (b) the broad powers of the authorities to monitor and curtail the activities of associations under Decree No. 238 on Association of November 2017, the lack of availability of appeal regarding dissolution of associations, and the criminalization of unregistered associations; (c) Decree No. 13 and guidelines No. 1064/MFA.IOD.3, which restrict the activities of international non-governmental organizations solely to those that are in line with government goals and policies (arts. 19 and 22).

36. **The State party should give full effect to the constitutional guarantee of freedom of association in practice and revise relevant laws, regulations and practices with a view to bringing them into compliance with article 22 of the Covenant.**

Participation in public affairs and the right to vote

37. The Committee notes the constitutionally defined leading role of the Lao People's Revolutionary Party, and considers that the principles and procedures governing the nomination of candidates for elections, compounded by the restrictions on the freedom of expression, assembly and association as referred to in paragraphs 33 to 36 above, do not ensure the right of citizens to genuinely take part in the conduct of public affairs, to vote and to be elected, as prescribed in article 25 of the Covenant. It recalls that, although the Covenant does not require any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors (see general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 21). The Committee is also concerned about the denial of the right to vote and to stand for elections to persons with intellectual or psychosocial disabilities and to prisoners serving their sentences, and recalls that a blanket denial of prisoners' right to vote does not meet the requirements of article 10 (3), read in conjunction with article 25 of the Covenant (arts. 10, 25 and 26).

38. **The State party should take all measures necessary to give full effect to the right of citizens to genuinely take part in the conduct of public affairs, to vote and to be elected, in accordance with article 25 of the Covenant. It should also ensure that electoral legislation does not discriminate against persons with intellectual or psychosocial disabilities by denying them the right to vote on a basis that is disproportionate or that has no reasonable or objective relation to their ability to vote, and revise legislation denying all convicted prisoners the right to vote.**

Rights of persons belonging to minorities

39. The Committee is concerned about reports of the forced relocation of a number of ethnic minority communities as a result of land grabbing and land concessions to development projects, such as the building of hydropower stations, extractive activities or the establishment of economic special zones, that have a negative impact on their use of land and resources, and significantly affect their livelihood and lifestyle. While noting the relevant laws and policies in place, the Committee is concerned that many of the traditional lands were reportedly converted into development projects without adequate consultation with the affected communities or without adequate compensation or relocation sites, and at reports of the arbitrary arrest and detention of farmers and villagers protesting against land leases and concessions, such as in the case of farmers from Yeup village, Thateng District. The Committee is also concerned about reports of the Government's persecution of the Hmong ethnic minority group, allegations of the detention and enforced disappearance of Hmong men (see para. 19 above) and malnutrition and lack of access to health care (arts. 2, 6, 7, 9, 14, 16, 17, 26 and 27).

40. **The State party should:**

(a) **Take all steps necessary to ensure that meaningful consultations are held with communities with a view to obtaining their free, prior and informed consent for development projects with an impact on their livelihood, lifestyle and culture;**

(b) **Ensure that communities participate in any process concerning their relocation, that such relocation is carried out in accordance with relevant international standards, in particular the principle of non-discrimination, the rights to be informed and consulted, to an effective remedy and to the provision of adequate relocation sites that take due account of their traditional lifestyle and, where applicable, their right to ancestral land; and provide adequate compensation when relocation is not possible;**

(c) **Cease the persecution of members of the Hmong ethnic minority, including their arbitrary arrest, detention and enforced disappearance, and effectively investigate such acts, bring perpetrators to justice, and provide full reparation to victims or their families; and take robust measures to ensure effective access for members of the Hmong community to adequate food and health care, without discrimination.**

D. Dissemination and follow-up

41. **The State party should widely disseminate the Covenant, its initial report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country and the general public. The State party should ensure that the initial report and the present concluding observations are translated into the official language of the State party.**

42. **In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, by 27 July 2020, information on the implementation of the recommendations made by the Committee in paragraphs 20 (enforced disappearances), 38 (participation in public affairs and the right to vote) and 40 (rights of persons belonging to minorities) above.**

43. **The Committee requests the State party to submit its next periodic report by 27 July 2022 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 27 July 2019, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's replies to that list of issues will constitute the next periodic report to be submitted under article 40 of the Covenant.**